

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62081; File No. SR-NASDAQ-2010-058)

May 11, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Members Using the NASDAQ Market Center

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 3, 2010, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on May 3, 2010. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 C.F.R. 240.19b-4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In response to announced execution rate changes at the New York Stock Exchange ("NYSE"), NASDAQ is making minor modifications to its pricing schedule for the routing of orders through the NASDAQ Market Center. First, NASDAQ is increasing the per share credits and fees for members using the STGY, SCAN, SKNY, SKIP, or DOTI routing strategies to either add liquidity or execute at the NYSE.<sup>5</sup> The credit for orders adding liquidity after routing will increase to \$0.0013 from \$0.0010 per share. The fee for other orders will increase to \$0.0021 from \$0.0018 per share. For orders using these strategies that execute in destinations other than the NYSE (or NASDAQ OMX BX, in the case of DOTI orders), the fee will remain \$0.0030 per share executed.<sup>6</sup>

Second, NASDAQ is modifying the fees for members using the TFTY or MOPP routing strategies, and directed orders that execute in a venue other than the NASDAQ Market Center as

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<sup>5</sup> Orders designated to use these routing strategies check the NASDAQ book for the full size of the order prior to routing. The terms and conditions of NASDAQ's routing strategies are described in NASDAQ Rule 4758.

<sup>6</sup> For DOTI orders that execute in NASDAQ OMX BX, NASDAQ will continue to pass through fees and rebates associated with order execution on that venue.

follows: 1) The fees for directed orders designated as Intermarket Sweep Orders that execute at the NYSE will increase to \$0.0023 from \$0.0020 per share executed; 2 ) The fee for other directed orders that execute at the NYSE will increase to \$0.0022 from \$0.0019 per share executed for members with an average daily volume through the NASDAQ Market Center in all securities during the month of more than 35 million shares of liquidity provided; 3) The fee for all for other directed orders that execute at the NYSE from members that do not reach the 35 million threshold will increase to \$0.0023 from \$0.0020 per share; 4) The fee for MOPP orders that execute at the NYSE will increase to \$0.0023 from \$0.0020 per share; and 5) The fee for TFTY orders that execute at the NYSE will increase to \$0.0017 from \$0.0014 per share. All other fees and pass-through fees remain unchanged.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The impact of the modest price increases upon the net fees paid by a particular market participant will depend upon a number of variables, including the routing strategies that it uses, the relative availability of liquidity on NASDAQ and other venues, the prices of the market participant's quotes and orders relative to the national best bid and offer (i.e., its propensity to add or remove liquidity), and the types of securities that it trades. NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

venues if they deem fee levels at a particular venue to be excessive. Accordingly, if particular market participants object to the proposed fee increases, they can avoid paying the fees by directing orders to other venues or using routing strategies and order types that are not subject to the increases. NASDAQ believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to NASDAQ's competitors if they object to the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>10</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-058 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2010-058. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without

change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2010-058, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Elizabeth M. Murphy  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).